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October 10, 2000

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Office of Thrift Supervision
1700G Street, NW
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Attention: Docket No. 2000-56

The Massachusetts Division of Banks (the "Division") submits this letter to comment on the proposed changes to the stock conversion and the mutual holding company regulations of the Office of Thrift Supervision ("OTS"). The Division appreciates the opportunity to comment on certain changes proposed by the OTS. As you may be aware, the Commonwealth has a significant number of state-chartered thrift institutions. Presently there are 88 state-chartered savings banks and 76 co-operative banks. Of that number, 120 are in mutual form and 21 are subsidiary banking institutions of mutual holding companies. Three of those subsidiary banking institutions have issued minority shares.

The Massachusetts General Laws governing standard conversions authorize the Division to promulgate regulations to implement the conversion process. The statutes state that the Division's regulations should be similar to those of the OTS subject to any adjustments and exceptions which the Division may make. All of the Commonwealth's thrift institutions are insured by the Federal Deposit Insurance Corporation ("FDIC"). For these reasons the Division asks that the OTS consider all comments and suggestions received in the light of eliminating or not creating conflicts or ambiguities between regulations of federal regulatory agencies as well as regulations promulgated by state banking agencies. Such conflicts are invariably cited during the application process before the Division and other state agencies. Formal changes to OTS regulations will also eliminate third party references to various and sometimes inconsistent interpretations of existing policies. The Division acknowledges the important assistance of OTS staff in its New Jersey and Washington D.C. offices in explaining existing regulations and policies when issues have arisen.

The Division recognizes the need to adjust procedures and regulations from time to time. It has done so for its own conversion process. A converting or reorganizing bank now meets in advance of any application with the Commissioner and appropriate senior staff. At such a meeting the purposes and business plan for the conversion or reorganization are to be specifically commented on as well as the bank's deliberation process for the corporate transaction. The necessity to evidence significant board involvement and participation is vital.

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The business plan and deployment of capital are assessed for consistency throughout the process, which includes the reasons for the corporate transaction articulated in any information document and offering circular. Moreover, the Division considers the business and strategic planning process a key factor in assessing the quality of management during the safety and soundness examination function both prior to and subsequent to the conversion. As part of the scope of an examination, the Division thoroughly reviews the institution's business plan and focuses heavily on how closely management adheres to the plans after they are approved by the board. The Division considers this examination function particularly important in the case of a recently converted institution, where the examiners focus on how management deployed the conversion proceeds and whether the actual use of the funds is consistent with the strategies outlined in the business plan. Any material deviations from the business plan are subject to extensive examiner review and criticism.

The role of the Board should remain significant after the transaction. The Division has found it helpful for a post-conversion committee of Board members to be formed to conduct an internal review of adherence to the business plan and use of proceeds from the conversion. Such a committee should be used and perhaps be made mandatory in any transaction in which stock is sold to the public.

The Division believes that it is in the best interest of all parties to address the formation of charitable organization explicitly through the regulations. The present system of approval on a case-by-case basis and the need for waivers places unnecessary uncertainty on banks. The Division notes the standards in the regulations including, specifically, the requirements for voting shares in the same ratio as all other shares voted on proposals considered by shareholders, and reserving board seats for an independent director and a director of the bank. The Division has imposed these and related requirements on banks wishing to establish charitable foundations and views the OTS formalization of such requirement as a most positive development.

The Division notes the proposed rule change relative to stock repurchases. Under the current rule a converted institution cannot repurchase any stock. In the second and third years, repurchases up to 5% of an institution's outstanding stock may be made in any twelve month period as long as the repurchases do not cause the institution to become undercapitalized, and certain other conditions have been met. Repurchases in excess of such limits have been authorized by the OTS under exceptional circumstances as determined by the OTS. The proposed regulation would eliminate restrictions after the first year following conversion. The Division agrees with the OTS position. It believes that such repurchases subsequent to the first year represent business decisions by management of the converted institution. In a dynamic and fast changing environment, management must have the flexibility to react. The proposed rule gives management the certainty necessary to know that it can react. The Division also notes that during the first year an institution may also repurchase if extraordinary circumstances are demonstrated. The Division believes that it is a positive development for OTS to work with the FDIC to establish consistent practices regarding implementation of this provision.

The Division has also considered your invitation to comment on certain other issues of interest to mutual institutions. Of particular interest was the issue of whether mutual institutions should be permitted to affiliate in various ways to leverage managerial and administrative resources. Massachusetts recently passed Chapter 46 of the Acts of 2000. The purpose of this Act is to authorize independent banks additional options for providing services to their customers.

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The Act repeals the provision in existing law which prohibits two state-chartered banks from occupying the same office. This change would allow a state-chartered bank, if it chooses, to share an office with one or more other state banks or federally-chartered banks. The Act also authorizes independent, state-chartered banks not in a holding company to act as agents for other banks in order to receive deposits, renew time deposits, close loans, service loans and to receive payments on loans and other obligations. One effect would be to allow two or more community banks to form an agency relationship to provide basic banking services for each other's customers without forming a mutual holding company or making any other corporate changes. The new law also provides that the agent bank's office shall not be deemed a branch office of the principal banking institution and the agent bank could not conduct any activity it could not conduct as principal. It became effective on June 23, 2000. The Division supports any and all similar means to allow mutual institutions to remain independent while leveraging resources for the benefit of their customers.

In closing, the Division's review of the proposed regulations was significantly aided by the format and the plain language used. It provided substantive information in a clear and concise manner.

Very truly yours,



Thomas J. Curry
Commissioner of Banks

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